

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:08-CV-00460-FL

DUKE ENERGY PROGRESS, INC.,)
)
Plaintiff,)
v.)
)
3M COMPANY, et al.,)
)
Defendants.)
)

Civil Action No.: 5:08-CV-00463-FL

CONSOLIDATION COAL COMPANY,)
)
Plaintiff,)
v.)
)
3M COMPANY, et al.,)
)
Defendants.)
)

TWELFTH REPORT OF SPECIAL MASTER

Pursuant to Rule 53(e) of the Federal Rules of Civil Procedure and paragraph B.5. of the Court's appointment orders of January 8, 2014 (460 DE-1387; 463 DE-1379), and as further directed pursuant to the Court's Text Order of May 9, 2016, I respectfully submit the following report for the period from April 12, 2016, through July 19, 2016. My Eleventh Report of Special Master ("Eleventh Report"), filed on April 12, 2016 (460 DE-1805; 463 DE-1796), covering the period from January 1, 2016, through April 11, 2016, reported on the continuing progress of the parties in documenting settlements reached before, during and immediately after formal ADR

settlement meetings held in September, 2015. It also reported on progress made by the plaintiffs and nearly all defendants and third-party defendants (together, "defendants") in their October, 2015, negotiations with the United States, which resulted in a tentative agreement in principle on key material terms of an anticipated consent decree, and their continuing efforts to reach final consent decree language and agreements among the settling plaintiffs and defendants pursuant to which the consent decree would be implemented.

In its Text Order of May 9, 2016, the Court directed me, consistent with recommendations contained in my Eleventh Report, to continue serving as special master and to submit this status report on or before July 20, 2016. Upon an opposed motion of the plaintiffs, the Court entered an Order on March 30, 2016 (460 DE-1802; 463 DE-1793) extending from April 22, 2016, to July 22, 2016, certain deadlines related to dispositive motions and motions to exclude testimony of expert witnesses. On July 8, 2016, the plaintiffs filed a pending motion for an extension of those deadlines to December 14, 2016 (460 DE-1820; 463 DE-1811).

Throughout the present reporting period, I have monitored new filings and the Court's orders. My occasional communications with counsel for the parties and the United States were pursuant to a standing authorization from Magistrate Judge Gates to engage parties in *ex parte* communications regarding settlement and directly related issues. Magistrate Judge Gates has reviewed and approved this Twelfth Report of Special Master.

Settlement

During the reporting period, the plaintiffs and defendants have continued to complete and document settlements reached prior to, at and following the ADR sessions. Several

additional stipulations of dismissal have been filed. Dismissal stipulations have not been filed as to eleven of the defendants expected to enter into the consent decree with the United States. Four of those defendants reached settlements with the plaintiffs that, in each case, are contingent on they and the plaintiffs entering into a final consent decree with the United States. I have urged and continue to urge prompt efforts to reduce the other seven settlements to filed stipulations of dismissal. Counsel for the plaintiffs has advised me that final language has been agreed to with respect to ten of the eleven pending settlements, and that final client approval is pending as to the eleventh defendant.

During the reporting period, the plaintiffs and all but six defendants have continued to diligently negotiate with the United States and with one another to reach agreement concerning final terms of a consent decree and the means and terms by which obligations of settling parties under the consent decree would be met. They have made very substantial progress. Counsel for certain parties and the United States have advised me that a few relatively minor corrective revisions to the draft consent decree are in review and that the United States expects to soon forward a final consent decree and signature pages to the settling defendants. Furthermore, counsel for the plaintiffs and defendants have advised me that their negotiations concerning implementing agreements have resulted in substantial progress and that those agreements are expected to be executed prior to the date on which consent decree signature pages must be sent to the United States.

It now appears highly likely that the settling plaintiffs and defendants will reach an agreement with the United States concerning a consent decree, most likely to be lodged with the Court in late August or September, 2016. Thereafter, following a period of publication of a notice and thirty to sixty days of public comment, and subject to the United States considering and addressing any public comments, the United States is expected to seek judicial approval and entry of the consent decree.

Recommendation Concerning My Appointment

I recommend that my appointment as Special Master continue until a settlement between settling parties and the United States is lodged with the Court, or until such later date or event as the Court may deem appropriate. Unless the Court wishes to add other tasks during remainder of my service, I intend to monitor filings and orders and remain generally informed and available to the parties and United States in a limited "standby" role. My invoices for services and expenses for this limited role are not likely to exceed \$1,000 per month. I anticipate that the Court will direct me to submit at least one additional report.

Budget and Compensation

My invoice for services in April, May and June, 2016, were in the amounts of \$720.00, \$300.00 and \$210.00, respectively. I did not incur any reimbursable expenses during that period. My invoices have been paid on time and in full. At present, I do not plan to invoice for time and any expenses associated with organizing my files for long-term retention.

Respectfully submitted on July 19, 2016.

/s/ David O. Ledbetter
Special Master
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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ David O. Ledbetter
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